89-1301

Supreme Court, U.S.
FILED
FEB 9 1990
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

MARSHALL P. SAFIR,

Petitioner,

V.

UNITED STATES LINES INC., UNITED STATES LINES S.A., LYKES BROS. STEAMSHIP CO. INC., AMERICAN PRESIDENT LINES LTD., FARRELL LINES INC., AMERICAN EXPORT LINES INC., PRUDENTIAL LINES INC., PRUDENTIAL-GRACE LINES INC.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MARSHALL P. SAFIR, *Pro Se*
271 Grand Central Parkway
Floral Park, New York 11005
(718) 225-0210

February 9, 1990

33 pp

Questions Presented

Whether the discretion of the Court of Appeals under Rule 38 of the Federal Rules of Appellate Procedure extends to continual injunctive control of right to its access where appellant has submitted evidence of compliance with previous sanction and evidence of financial ability to satisfy a judgment were the need to arise to assess sanctions in the future.

Whether the discretion of the Clerk of the Court of Appeals under Rule 27(b) of the Federal Rules of Appellate Procedure pursuant to rule or order of the court extends to a substantive dismissal without motion for such action by the appellees and notice to the appellant for reply.

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DENIAL OF MOTION FOR RECONSIDERATION
NOV. 22, 1989 ..... A-1

ORDER OF DISMISSAL IN 89-7547
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ORDER OF DISMISSAL IN 89-7549
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

MARSHALL P. SAFIR,

Petitioner,

V.

UNITED STATES LINES INC.,
UNITED STATES LINES S.A., LYKES BROS. STEAMSHIP CO. INC., AMERICAN PRESIDENT LINES LTD., FARRELL LINES INC., AMERICAN EXPORT LINES INC., PRUDENTIAL LINES INC., PRUDENTIAL-GRACE LINES INC.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

OPINIONS BELOW

The Orders of the Court of Appeals of November 22, 1989 and June 29, 1989 are appended (A-1 and A-2) in Second Circuit Docket 89-7547. The Order of the Court of Appeals of November 16, 1989 in Docket 89-7549 is appended (A-3). Other relevant opinions include *Safir v. U.S. Lines et al.*, 792 F.2d (2nd Cir. 1986) *cert. denied*, 479 U.S. 1099 (1987); *Safir v. United States Lines et al.*, 616 F.Supp. 613 (EDNY 1985); *Safir v. Dole*, 718 F.2d 475 (D.C. Cir. 1983) *cert. denied*, 467 U.S. 1206 (1984) *rehearing denied*, 467 U.S. 1268 (1984); *Safir v. Klutznick*, 526 F.Supp. 921 (D.D.C. 1981). *In Re Marshall P. Safir*, 108 S.Ct. 496 (1987); *In Re Marshall P. Safir*, 108 S.Ct. 788 (1988). *Safir v. ICC & CSX Corp.*, 831 F.2d 283 (2nd Cir. 1987) *cert. denied*, 109 S.Ct. 520 (1988).

JURISDICTION

The jurisdiction of this Court is invoked under 28 USC § 1251 (1). The judgments below were entered on November 16, 1989 and November 22, 1989.

Federal Rules of Appellate Procedure
28 USCA
Rule 27(b)
Determination of Motions for Procedural Orders.

Notwithstanding the provision of (a) of this Rule 27 as to motions generally, motions for procedural orders, including any motion under Rule 26(b), may be acted upon at any time, without waiting for a response thereto, and pursuant to rule or order of the court, motions for specified types of procedural orders may be disposed of by the clerk. Any party adversely affected by such action may by application to the court request consideration, vacation or modification of such action.

28 USCA Rule 38 F.R.A.P.

If a court of appeals shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee.

STATEMENT OF THE CASE

On June 29, 1989 the Clerk of the Second Circuit Court of Appeals dismissed an appeal of a decision of the Distrct Court for the Eastern District of New York in its Docket No. 89-7547 on grounds that the petitioner had not complied with an Order of the Court of Appeals issued August 12, 1987 in regard to the payment of a sanction of $5,000 in *Safir v. Interstate Commerce Commission and CSX Corp.*, 831 F.2d 283 (2nd Cir. 1987) *cert. denied,* 109 S.Ct. 111 (1988) *rehearing denied* 109 S.Ct. 520 (1988).

On July 11, 1989 petitioner filed a Motion for Reconsideration of the dismissal order on grounds that the Clerk had made a mistake in that the sanction had been paid on December 9, 1988 and that the Court had been made aware of it immediately thereafter.

The Motion for Reconsideration (under Rule 27[b]) was filed upon the instruction of the Clerk's Office as the Clerk stated that a Petition for Rehearing under Rule 40 of the Fed. Rules of App. Proc. (which would have tolled Rule 13.1 of this Court) was inappropriate. Nevertheless in spite of the obvious error and the Clerk's indication of prompt correction, the Court had not acted to reinstate the appeal. On November 22, 1989 the motion was denied.

The delay in action on the motion created uncertainty as to whether the Dismissal Order by the Clerk could be construed as a procedural order under Rule 27(b) as defined by the Advisory Committee Note to Rule 27 or as a substantive final order of the Court affecting the rights of the parties from June 29, 1989 under former Rule 20 of this Court (now Rule 13.2). Petitioner filed for certiorari in *Safir v. United States Lines et al.*, Docket 89-652 on October 25, 1989 to protect jurisdiction in this Court.

This precaution was vindicated when the Second Circuit, rejecting the uncontroverted evidence that the Clerk had made a mistake, denied reinstatement of the appeal in its Docket 89-7547. The substantive intent of the Clerk's Order, thus verified, nevertheless extended petitioner's time under Rule 13 from November 22, 1989. This Court denied the Petitioner Docket 89-652 five days later.

The Order of August 12, 1987 stated in relevant part:

"It is further ORDERED that, as damages for frivolous litigation in this Court, Safir shall pay to CSX Corporation five thousand dollars ($5,000) within 30 days, Fed. R. App. P. 38, and that the Clerk of the Court will accept no further papers from Safir in any matter ... until Safir furnishes satisfactory evidence of payment of this monetary obligation."

The petitioner, without the ability to pay, filed a petition in this Court *in forma pauperis* and shortly after its denial the Second Circuit entered the Order of March 24, 1988 (A-4, 5).

The March 24, 1988 injunction decrees in pertinent part:

"Accordingly, it is hereby ORDERED that Marshall P. Safir, his agents, employees, and attor-

> neys are enjoined from filing in the United States Court of Appeals for the Second Circuit any appeal, motion, petition, or request for relief of any sort concerning in any way United States Lines, Inc., CSX Corporation, Sea-Land Corporation, or any person, company, or entity engaged in the transportation of goods by sea, without having obtained leave of this Court for such filing. This Order shall be filed forthwith, and the injunction shall be effective from the date of filing of this Order. It is further ordered that Safir's request to vacate the Order of August 12, 1987 is denied."

By this action the court expanded the restriction on access to the appellate court from the requirement of showing adequate proof that its prior sanctions had been complied with, to control by injunction against the right to appeal.

Under the terms of a district court injunction as modified by the Second Circuit in *Safir v. U.S. Lines et al.*, 792 F.2d 19, 35 (2d Cir. 1986), *cert. denied*, 479 U.S. 1099 (1987), new meritorious claims arising out of the same circumstances which resulted in the judgment as to liability of *Safir v. Klutznick*, 526 F.Supp. 921 (DDC 1981) were not precluded from adjudication.

Since the Second Circuit decision in *Safir v. United States Lines et al.*, 792 F.2d 19 (2nd Cir. 1986), *cert. denied*, 479 U.S. 1049 (1987), this petitioner has endeavored to establish a meritorious claim based not on statute but in quasi-contract to satisfy the District Court under the injunctive restraint imposed on him. The judgment of *Safir v. Klutznick*, 526 F.Supp. 921 (D.D.C. 1981) as modified and affirmed in *Safir v. Dole*, 718 F.2d 475 (1983) created a constructive trust over

subsidy contract payments to the appellees herein which payments were made in violation of their subsidy contracts. When this litigation began, eight ship lines were viable corporations. In the past 10 years that number has been reduced to three who are solvent. These are American President Lines, Lykes Bros. and Farrell Lines Inc. who would in varying degrees be able to satisfy the imposition of the trust. United States Lines and Prudential Lines are bankrupt.

The Court in *Safir v. United States Lines Inc., supra,* held that the owner of an unsubsidized ship line did not have an implied private right of action under the Merchant Marine Act 1936, section 810 (46 U.S.C. § 1227). The Court specifically avoided foreclosure of a new claim under another basis for recovery.

The Complaint filed in October 1987 set forth two claims which have no similarity to statutorily implied private right of action. Count I of the Complaint is a conspiracy claim under the Civil Rights Act of 1871, 42 U.S.C. § 1985(3) where recovery of damages is authorized by law. Count I sets forth the foundation on which the findings of the Secretary of Commerce was based. Government officials were implicated in the conspiracy by which the respondents received moneys to which they were not entitled.

Count II of the Complaint is not based on statute–sounding instead in contract. Any unsubsidized ship operator who could meet the criteria of liner operation under an American flag was *per se* a third party beneficiary of subsidized carriers contracts with the Maritime Administration, as the wording of section 810 was incorporated in each and every such contract. All of the Rules of the Restatement Second, Contracts–Chapter 14 "Beneficiaries" apply to government contracts under §313(1).

The District Court rejected the claims in May 1989, not only refusing to establish grounds why the claims had no merit, but indeed refused to acknowledge the existence of the 1987 Complaint which the Court permitted the Clerk to accept for filing on October 14, 1987.

This affected petitioner in two ways. First, the refusal to recognize the existence of the 1987 Complaint makes a controlling difference in the cognizability of maritime lien claims against all of the named defendants under a change in the law in 1988. Unless appellant can relate his claims back to an existing suit by amendment under Rule 15(c) FRCP, the claims are a nullity.

The Ship Mortgage Act of 1920 (46 U.S.C. § 911 et seq.) and specifically the wording of § 953(a)(1) has been repealed by the 1988 recodification, Public Law 100-170, 102 STAT, 4735 effective January 1, 1989. However, the Savings Clause states: "except that the repeal does not affect any civil action filed before that date." The new codification 46 U.S.C. § 31301 et seq. delimits a preferred maritime lien to a lien on a single vessel and confines maritime lien status only to persons providing necessaries to such vessel. §§ 31341, 31342. Contrast *Archawski v. Hanioti,* 350 U.S. 532 (1955).

Secondly, the refusal to recognize the existence of the 1987 complaint would also nullify the constructive trust because while that claim based on the *Klutznick* judgment of 1981 was filed within the six-year statute of limitations, any "current" new action as characterized by Judge Nickerson would be jurisdictionally barred.

The constructive trust claim was in immediate jeopardy based on the prospective disbursement of $24,000,000 on the

effective date of a Plan of Reorganization of US Lines and US Lines S.A. to creditors other than this petitioner. The cash on hand of the debtors is the admitted surplus from the sale of Lancer vessels *in rem* to satisfy the mortgage guarantee obligations of USL to the Maritime Administration under 46 U.S.C. §§ 1273-1275. The debtor claims that the surplus over the government claim is an asset of the estate of USL. If the appellant's claim based on the judgment as to liability of *Safir v. Klutznick* is valid and the finding of government complicity in the illegal action in *Safir v. Dole, supra,* as detailed in Count I of the Complaint further establishes the wrongful nature of the unjust enrichment to USL, USLSA (as well as the other defendants), funds held in the jurisdiction of the Bankruptcy Court are subject to turnover to this petitioner under 11 U.S.C. § 541(d).

Therefore, when the Plan would become effective, disbursement by the USL Reorganization Trust to other creditors would represent an insuperable morass of new litigation to trace the funds into the far-flung recipients. It was to protect this constructive trust claim as set forth in Counts I and II of the Complaint that petitioner moved for leave to intervene in the bankruptcy proceeding by motion to the district court.

U.S. Lines had filed for protection under Chapter XI in 1986 and certain U.S. Lines "Lancer" class ships which had been sold *in rem* were still the subject of litigation between the holders of mortgages on them as to entitlement to the proceeds of the sales. By the autumn of 1988 that litigation had kept the Admiralty proceeding alive and the proceeds of the sales remained *in custodia legis*. General Electric Capital Corp., the second mortgagee had appealed to the Second Circuit (Docket No. 88-7589) a district court grant of summary judgment in favor of Prudential Insurance Co. of America

wherein the District Court had held the Prudential first preferred ship mortgage valid as to the GE claim without prejudice to any other lien claims, the Second Circuit affirmed. See *Prudential Ins. Co. of America v. American Lancer,* 870 F. 2d 867 (2d Cir. 1989).

Petitioner's indigent status—his inability to pay the $5,000 sanction ordered under Rule 38 Fed. R. App. Proc. in August 12, 1987 precluded the filing of motion for intervention with the Court to inform the panel of the existence of a maritime lien which primed both mortgages under the Ship Mortgage Act, 46 U.S.C. § 953, and which, if valid, would render the issues on appeal nugatory. In connection with the Lancer litigation, petitioner had been financially reduced to the necessity of petitioning for both mandamus and certiorari in this Court *in forma pauperis. In Re Marshall Safir,* 108 S.Ct. 4, 476 (1987), 108 S.Ct. 788 (1988) and *Safir v. ICC, supra.*

On November 17, 1988 under circumstances reminiscent of the long count in Dempsey-Tunney, the petitioner found himself in adventitious receipt of a check from the Trustee of Sapphire Steamship Lines, countersigned by U.S. Bankruptcy Judge Cornelius Blackshear (BCSDNY) for the partial return of equity twenty-one years after the destruction of his business by U.S. Lines and others. The check was in the amount of $680,239.95.

On December 9, 1988 petitioner was able to pay the Rule 38 award to CSX. On December 16, 1988, after filing evidence of payment to the Clerk of the Court of Appeals, petitioner moved for leave to intervene in Docket 88-7589. The affidavit in support of intervention included a copy of Safir's check to CSX and a copy of the trustees' check to Safir. The

motion for intervention was denied but the affidavit and Judge Blackshear's countersignature on the check was ample notice that petitioner should no longer be stigmatized as a member of that small group of litigants, bankrupt, indigent and unaccountable whose frivolous papers paralyze the court and where curtailment of access, absent the effectiveness of a damages judgment, is the only method available to defend the court's ability to carry out its constitutional functions. *In Re Martin-Trigona*, 795 F.2d 9 (2d Cir. 1986).

Such was not to be. The payment of the sanction and the other evidence of petitioner's financial accountability have been ignored to this day. The order of November 22, 1989 (A-1) affirmed the Clerk's action notwithstanding the evidence.

On November 16, 1989 the Court of Appeals further exercised its power under the March 24, 1988 injunction by dismissing the appeal of the denial of Bankruptcy Court intervention in the USL and USL(SA) cases, 2nd Circuit Docket No. 89-7549 (A-3), which was the companion to No. 89-7547.

The grounds for dismissal was violation of the injunction by failure to request leave to file the appeal. The facts are that the appeals in both 89-7547 and 89-7549 were noticed in the District Court and the fees paid there in accordance with the rules on June 2, 1989. Five days later the Court of Appeals issued Civil Appeals Scheduling Orders without regard to the injunction and before motions, if such were any longer necessary, could be drawn up by the petitioner.

After an Order of July 19, 1989 by the Court in Docket 89-7549 extended the time for filing briefs granted on petitioners' motion for the reasons set forth in Petition for Certiorari 89-652 (pp. 2, 3) the Court then calendared the duly briefed

appeal for hearing on December 1, 1989. An order dated November 14, 1989 adjourned the oral argument and the order of dismissal followed two days later.

REASONS FOR GRANTING THE WRIT

The dismissals of both appeals in *Safir v. U.S. Lines et al.* when taken together have raised serious questions as to the expansion of authority of the Court of Appeals under Rule 38 of the Federal Rules of Appellate Procedure to include control by injunction not only of those litigants indigent or bankrupt to whom monetary sanctions imposed are futile, but to financially accountable litigants who are fully prepared to accept responsibility for the soundness or unsoundness of their arguments on appeal.

Secondly, the dismissal of the appeal on the merits of the Safir claims in Docket 89-7547 also raises a question as to use of the Office of the Clerk of the Court under the 1979 Amendment to Rule 27(b) in furtherance of the denial of access where, for arcane reasons, the Court may find expediency the better part of justice.

Overreaching Rule 38

It is well settled that a court faced with a litigant engaged in a pattern of frivolous litigation has the authority to implement a remedy that may include restrictions on that litigant's accesss to the court in cases where sanctions have been imposed in that court in the past and have not been paid. *Becker v. Adam Drug Co.*, 819 F.2d 32 (2d Cir. 1987), *cert . denied,* 108 S.Ct. 719; *Lysiak v. C.I.R.*, 816 F.2d 311, 313 (7th Cir. 1988); *In Re Martin-Trigona,* 737 F.2d 1254 (2d Cir.

1984); 795 F.2d 9 (2d Cir. 1986); *Johl v. Johl*, 788 F. 2d 5 (2d Cir. 1986); *Urban v. United Nations*, 768 F. 2d 1497 (DC Cir. 1985); *In Re Green*, 669 F.2d 779, 785 (8th Cir. 1981); *Schiff v. Simon & Schuster*, 766 F.2d 61 (2d Cir. 1985).

It is clear that the effectiveness of the sanction under Rule 38 against frivolous and vexatious abuse of the processes of the court is based on compliance with the sanction before being permitted to pursue new matters.

In no recorded decision, however, has an appellate court held that regardless of whether the appellant has complied with past sanction, and regardless of the fresh evidentiary proof of financial responsibility to satisfy any judgment for costs, attorney's fees and damages, now and in the foreseeable future, that access to the Court of Appeals for review of district court error can be barred indefinitely.

Both the Order of August 12, 1987 and its progeny the Injunction Order of March 24, 1988 lost their foundation when two circumstances were made known to the Court —that sanction had been paid and the injunctive relief was no longer appropriate since other sanctions if necessary would be effective against the litigant whose financial state had been shown to be dramatically improved.

This is in contrast to *In Re Martin-Trigona*, 737 F.2d at 1262, "Injunctive relief was fully appropriate, since other sanctions would *not* be effective. Assessment of costs and legal fee against this appellant might be fruitless in light of the bankruptcy proceedings. . . " The Fifth Circuit would also, in contrast with the above, leave open the possibility of exception to the proof of payment requirement even in a

proper case *in forma pauperis. Ferguson v. MBank, Houston, N.A.*, 808 F.2d 358 (1986).

The Order of Dismissal of November 16, 1989 in *Safir v. U.S. Lines et al* taken in such peremptory fashion on such belated technicality was a graphic escalation of the dangerous possibilities inherent in the expansion of the scope of Rule 38. Moreover, if a court can ignore evidence of payment of prior sanction in its possession to bootstrap injunctive control of future access to its forum by a litigant with an unremedied injury then the abuse has risen to a constitutional level.

In the Petition for Certiorari in *Safir v. U.S. Lines*, Docket 89-652 the petitioner on October 25, 1989 stated (p. 7):

> "The inconsistency of the Court's willingness to accept the $5,000 sanction payment in the review of the denial of intervention in the Bankruptcy Court while refusing to accept the existence of that payment to review the denial of the Safir contract claims on their merits is as mystifying as it is unfair."

The mystery has been solved by the dismissal of the appeal of the denial of Bankruptcy Court intervention (Docket 89-7549) on November 16, 1989 after full briefing and a date for oral argument already set.

The appeal of the denial of Bankruptcy Court intervention was inevitably moot where the seminal issue of the validity and priority of the Safir claim could be dismissed—and stay dismissed without a hearing, because of the improper exercise of judicial administrative power.

The Distortion of Rule 27(b)

There is nothing in Rule 27 that grants to the Clerk of the Court of Appeals the power *sua sponte* to dismiss an appeal. The requirements of the Rule are that a motion be filed by a party to the appeal with reasonable notice to the adversary that the only grounds for acting without a response are that the motion be procedural and not substantive so as to affect the rights of either party.

In this case none of the criteria as spelled out in the Advisory Committee Note were met. The Clerk's Order of Dismissal was one of substance. It is stated in the Committee Note to Rule 27, Subdivisions (a) and (b) that "a motion to dismiss is clearly such a motion" and "one that may be acted upon *after* notice which is reasonable under the circumstances."

The Clerk's action was clearly in violation of the Rule for two reasons. First, because the Clerk assumed to herself the power that no single judge of the Court has under subsection (c) of the Rule. Second, because the Clerk had in her possession the Safir affidavit filed in the *Prudential v. SS American Lancer* appeal, *supra*, which incorporated a receipt from CSX Corp. that the sanction had been paid.

The abuse of the discretion under the Rule had the substantive effect in this case of preempting petitioner's rights to redress in *this* Court's jurisdiction for a six month period until the November 22, 1989 Order was issued. During this period his interests were being irreparably harmed because if the Safir claims are valid, funds were being disbursed to others by Bankruptcy Court and Admiralty Court orders, which funds rightfully belonged to him.

The appeal in *Safir v. U.S. Lines, et al* in Docket 89-7547 was the substantive crux of petitioner's position from which injunctions against implementation of the Plan of Reorganization of USL in Docket 89-7549 and disbursement of $24,000,000. of ship sale proceeds to other creditors was based (see denial of injunction order of July 13, 1989 A-6).

It was also the foundation of petitioner's efforts to enjoin the payment of $40,000,000 to Prudential from funds held *in custodia legis* in the Admiralty proceedings and to which the petitioner claimed a priming maritime lien. (A-8).

The Clerk's Order not only made injunctive relief impossible, in the Second Circuit, it made remote the chance of interlocutory relief in this Court in the nature of certiorari or mandamus. The Petition in *Safir v. US Lines et al,* Docket 89-652 bore this out. Rule 27(b) was never intended to have such an effect on so broad a controversy. Rule 38 was never intended to be a permanent bar to the right of appeal. The Second Circuit affirmation of its Clerk's presumption was easily explicable only if the intent was to defeat the petitioner *in limine*.

CONCLUSION

The petition for certiorari should be granted. The expansion of the reach of Rule 38 should not extend to the power to ignore compliance with its own sanctions in order to justify an appellate injunction against direct access to the Court. In this case it was no longer warranted that injunctive control of a litigant be maintained for a year after the usual and proper safeguards against vexatious, repetitive and malicious abuse of process by irresponsible indigents and others who cannot be held accountable.

The expansion of the reach of Rule 27(b) for the purpose of delaying access to this Court for an additional six months compounds the abuse of discretion.

This petitioner has legitimate unremedied claims and for his conduct he can be held strictly accountable. Equal justice in this case points up the need for some guidelines to limit appellate discretion under these two rules.

Respectfuly submitted,

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February 9, 1990

APPENDIX

United States Court of Appeals
FOR THE
SECOND CIRCUIT

Pro Se
11/21/89

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 22nd day of November, one thousand nine hundred and eighty-nine.

Marshall P. Safir,

Plaintiff-Appellant,

-v- 89-7547

United States Lines,

Defendant-Appellee

UNITED STATES COURT OF APPEALS
FILED
NOV 22 1989
SECOND CIRCUIT

A motion having been made herein by appellant pro se for reconsideration under 27(b) Fed. R. App. P.

Upon consideration thereof, it is
Ordered that said motion be and it hereby is denied.

JAMES L. OAKES, Chief Judge
RICHARD J. CARDAMONE, Circuit Judge
MILTON POLLACK, District Judge
sitting by designation

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

89-7547

Filed June 29, 1989

MARSHALL P. SAFIR,

Plaintiff-Appellant,

—v.—

UNITED STATES LINES, INC., LYKES BROS. STEAMSHIP CO., INC., AMERICAN PRESIDENT LINES, LTD., FARRELL LINES, INC., AMERICAN EXPORT LINES, INC., PRUDENTIAL LINES, INC., PRUDENTIAL-GRACE LINES, INC.,

Defendants-Appellees.

The above referenced notice of appeal was filed in the district court on June 2, 1989, and received in this court for docketing on June 6, 1989. Because the appellant, Marshall P. Safir, has failed to demonstrate compliance with the sanctions set forth in an order entered on August 12, 1987, in *In Re: Marshall P. Safir, 87-3007 and Marshall P. Safir v. Interstate Commerce Commission, 87-4037*, the appeal filed on June 2, 1989, is hereby dismissed, pursuant to that order.

Dated: New York, New York
June 29, 1989

So ordered:

/s/ ELAINE B. GOLDSMITH
Elaine B. Goldsmith, Clerk

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

EDNY NICKERSON (0724)

85-CIV-864 **89-7549**

NOV. 16, 1989

FILED: UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
NOV 16 1989
ELAINE B. GOLDSMITH, CLERK

SAFIR
v.
UNITED STATES LINES, INC., ET AL.

In an order of this Court under 87-3007, *In Re: Marshall P. Safir* and 87-4037, *Marshall P. Safir v. Interstate Commerce Commission*, dated March 24, 1988, it was "ORDERED that Marshall P. Safir, his agents, employees, and attorneys are enjoined from filing in the United States Court of Appeals for the Second Circuit any appeal, motion, petition, or request for relief of any sort concerning in any way United States Lines, Inc., CSX Corporation, Sea-Land Corporation, or any person, company, or entity engaged in the transportation of goods by sea, without having obtained leave of this Court for such filing."

Marshall P. Safir, having failed to obtain leave of this Court to file the instant appeal,

IT IS HEREBY ORDERED that the above captioned appeal be and hereby is dismissed.

FOR THE COURT

/s/ ELAINE B. GOLDSMITH
Elaine B. Goldsmith
Clerk

A TRUE COPY
ELAINE B. GOLDSMITH

/s/ ELAINE B. GOLDSMITH
Clerk

CERTIFIED: NOV. 17, 1989

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 24th day of March one thousand nine hundred and eighty-eight.

Present: HONORABLE JON O. NEWMAN,
HONORABLE AMALYA L. KEARSE,
HONORABLE ROGER J. MINER,
Circuit Judges.

FILED: MARCH 24 1988

87-3007
87-4037

IN RE: MARSHALL P. SAFIR,

Petitioner.

MARSHALL P. SAFIR,

Plaintiff-Appellant,

—v.—

INTERSTATE COMMERCE COMMISSION, ET AL.,

Defendants-Appellees.

ORDER

This Court's Order of August 12, 1987, as amended by Order of September 21, 1987, required Marshall P. Safir to show cause within thirty days why he should not be enjoined from fil-

ing further papers in this Court concerning parties and topics therein set forth, without having obtained leave of this Court for such filing. Though this Court's Order of August 12, 1987, was not stayed, Safir elected to postpone his response to the show cause order until the United States Supreme Court on January 25, 1988, denied his motion for rehearing of the Supreme Court's prior denial of his petition for a writ of mandamus. Safir filed his response to the show cause order on February 18, 1988, accompanying it with a request, purportedly pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure, for an order vacating our Order of August 12, 1987. Though Safir's response to the show cause order may well be untimely, we have considered it on its merits and conclude that it provides no basis for withholding an appellate injunction, in view of Safir's history of pursuing vexatious litigation.

Accordingly, it is hereby ORDERED that Marshall P. Safir, his agents, employees, and attorneys are enjoined from filing in the United States Court of Appeals for the Second Circuit any appeal, motion, petition, or request for relief of any sort concerning in any way United States Lines, Inc., CSX Corporation, Sea-Land Corporation, or any person, company, or entity engaged in the transportation of goods by sea, without having obtained leave of this Court for such filing. This Order shall be filed forthwith, and the injunction shall be effective from the date of filing of this Order.

It is further ORDERED that Safir's request to vacate this Court's Order of August 12, 1987, is denied.

HONORABLE JON O. NEWMAN
Honorable Jon O. Newman

HONORABLE AMALYA L. KEARSE
Honorable Amalya L. Kearse

HONORABLE ROGER J. MINER
Honorable Roger J. Miner

Circuit Judges.

United States Court of Appeals
FOR THE SECOND CIRCUIT

89-7549
NOTICE OF MOTION
FOR INJUNCTION

SAFIR V. UNITED STATES LINES

MOTION BY:
Marshall P. Safir
271 Grand Central Pky.
Floral Park, N.Y. 11005
(718) 225-0210

Has consent of opposing counsel:

A. been sought?	☐ Yes	☒ No
B. been obtained?	☐ Yes	☒ No
Has service been effected?	☒ Yes	☐ No
Is oral argument desired?	☐ Yes	☒ No
(Substantive motions only)		
Requested return date:		
(See Second Circuit Rule 27(b))		
Has argument date of appeal been set?		
A. by scheduling order?	☒ Yes	☐ No
B. by first date of argument notice?	☐ Yes	☒ No

C. If Yes, enter date: _____

Judge or agency whose order is being appealed:
Judge Eugene Nickerson

Brief statement of the relief requested:
Injunction Pending Appeal

UNITED STATES COURT OF APPEALS
FILED
JUL 5, 1989
SECOND CIRCUIT

OPPOSING COUNSEL:
Haight Gardner Poor & Havens
Shea & Gardner
Kominers & Fort
Foley Hoag & Eliot
Walter Conston & Shurtman

EMERGENCY MOTIONS, MOTIONS FOR STAYS & INJUNCTIONS PENDING APPEAL

Has request for relief been made below? ☐ Yes ☒ No
(See F.R.A.P. Rule 8)
Would expedited appeal eliminate need for this motion? ☐ Yes ☒ No
If No, explain why not:
Insufficient time
Will the parties agree to maintain the status quo until the motion is heard? ☐ Yes ☒ No

Complete Page 2 of This Form
By: *(Signature of attorney)*
Marshall P. Safir
Appearing for: *(Name of party)*
Pro Se
Appellant or Petitioner:
☐ Plaintiff ☐ Defendant
Appellee or Respondent:
☐ Plaintiff ☐ Defendant
Date: July 3, 1989

ORDER

Kindly leave this space blank
IT IS HEREBY ORDERED that the motion be and it hereby is denied.
ISSUED AS MANDATE: July 14, 1989

JAMES L. OAKES
L. PIERCE
RALPH K. WINTER
Circuit Judges

A TRUE COPY
ELAINE B. GOLDSMITH
Clerk

UNITED STATES COURT OF APPEALS
FILED
JUL 13 1989
SECOND CIRCUIT

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 89-8076

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,

—v—

S.S. AMERICAN LANCER
MARSHALL P. SAFIR as complainant intervenor
appellant

NOTICE OF MOTION FOR LEAVE TO APPEAL AND FOR STAY OR INJUNCTION PENDING APPEAL

MOTION BY:

Marshall P. Safir
271 Grand Central Parkway
Floral Park, NY 11005
(718) 225-0210

OPPOSING COUNSEL:

Milbank, Tweed, Hadley & McCloy
Gilmartin, Poster & Shafto
Weil, Gotshal & Manges

Has consent of opposing counsel:
A. been sought? ☐ Yes ☒ No
B. been obtained ☐ Yes ☒ No

Has service been effected? ☒ Yes ☐ No

Is oral argument desired? ☒ Yes ☐ No

Requested return date:

Has argument date of appeal been set:
A. by scheduling order? ☐ Yes ☐ No
B. by firm date of argument notice? ☐ Yes ☐ No

EMERGENCY MOTIONS, MOTIONS FOR
STAYS & INJUNCTIONS PENDING APPEAL

Has request for relief been made below: ☐ Yes ☒ No

Would expedited appeal eliminate need for this motion? ☐ Yes ☒ No

If No, explain why not:
Insufficient time

Will the parties agree to maintain the status quo until the motion is heard? ☐ Yes ☒ No

Judge or agency whose order is being appealed:
SDNY Judge Richard Owen 87CV5842

Brief statement of the relief requested:
Injunction Pending Appeal

Appellant or Petitioner:
☒ Plaintiff ☐ Defendant

By: MARSHALL P. SAFIR
Appearing for: Pro se

Appellee or Respondent:
☐ Plaintiff ☐ Defendant

Marshall P. Safir
Date
July 17, 1989

ORDER

IT IS HEREBY ORDERED that the motion be and it hereby is denied.

A TRUE COPY
ELAINE B. GOLDSMITH
Clerk

ELLSWORTH A. VAN GRAAFEILAND
Ellsworth A. Van Graafeiland, USCJ

THOMAS J. MESKILL
Thomas J. Meskill, USCJ

9/20/89 AMALYA L. KEARSE
Amalya L. Kearse, USCJ

89-1301

No.

Supreme Court, U.S.
FILED
FEB 9 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

MARSHALL P. SAFIR,

Petitioner,

V.

UNITED STATES LINES INC., UNITED STATES LINES S.A., LYKES BROS. STEAMSHIP CO. INC., AMERICAN PRESIDENT LINES LTD., FARRELL LINES INC., AMERICAN EXPORT LINES INC., PRUDENTIAL LINES INC., PRUDENTIAL-GRACE LINES INC.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUPPLEMENTAL APPENDIX

MARSHALL P. SAFIR, *Pro Se*
271 Grand Central Parkway
Floral Park, New York 11005
(718) 225-0210

February 12, 1990

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UNITED STATES COURT OF APPEALS

EASTERN DISTRICT OF NEW YORK

85 C 0864

Filed May 18, 1989

MARSHALL P. SAFIR,

Plaintiff,

—against—

UNITED STATES LINES, INC., LYKES BROS. STEAMSHIP CO., INC., MOORE MCCORMACK LINES, INC., AMERICAN PRESIDENT LINES, INC., FARRELL LINES, INC., AMERICAN EXPORT LINES, INC., PRUDENTIAL LINES, INC., PRUDENTIAL-GRACE LINES, INC.,

Defendants.

MEMORANDUM AND ORDER

MARSHALL P. SAFIR
Floral Park, New York
plaintiff *pro se*

WALTER, CONSTON & SCHURTMAN, P.C.
(William Schurtman, Esq. and Gregory F. Hauser, Esq., of counsel)
New York, New York
FOLEY, HOAG & ELIOT
(Verne W. Vance, Jr., Esq., of counsel)
Boston, Massachusetts
for defendants Farrell Lines, Inc. and American Export Lines, Inc.

KOMINERS, FORT, SCHLEFER & BOYER
(T.S.L. Perlman, Esq., and William H. Fort, Esq., of counsel)
Washington, D.C.
for defendants Lykes Bros. Steamship Co., Inc.

HAIGHT, GARDNER, POOR & HAVENS
(John W. McConnell, Jr., Esq., of counsel)
Washington, D.C.
for defendants United States Lines, Inc. and United States Lines (S.A.), Inc. (formerly Moore McCormack Lines, Inc.)

HAIGHT, GARDNER, POOR & HAVENS
(Richard G. Ashworth, Esq., of counsel)
New York, New York
for defendants Lykes Bros. Steamship Co., Inc., United States Lines, Inc. and United States Lines (S.A.), Inc. (formerly Moore McCormack Lines, Inc.)

SHEA & GARDNER
(Robert T. Basseches, Esq., and William R. Hanlon, Esq., of counsel)
Washington, D.C.
HILLS, BETTS & NASH
New York, New York
for defendants American President Lines, Ltd.

DAVID P. HOWE, ESQ.
New York, New York
for defendants Prudential Lines, Inc. and Prudential-Grace Lines, Inc.

NICKERSON, *District Judge*

Plaintiff moves to vacate, alter or amend an order of this court dated September 13, 1985 under Rule 59(e) of the Federal Rules of Civil Procedure.

In an opinion dated May 27, 1986, the Court of Appeals for the Second Circuit modified this court's September 13, 1985 order to provide that plaintiff "is prevented only from commencing additional federal court actions relating in any way to defendants' pricing practices or merchant marine subsidies during the 1965-1966 period without first obtaining leave of the district court." *Safir* v. *United States Lines, Inc.*, 792 F.2d 19, 25 (2d Cir. 1986). The court's order is modified accordingly.

Plaintiff further seeks leave to file another action against defendants' arising out of the same circumstances as the earlier suit. He has failed to show why his current claims are different from the earlier action or why they have any merit. Leave to file the action is therefore denied.

The court's order of September 13, 1985 is modified in accordance with the Court of Appeals decision of May 27, 1986. Plaintiff's motions are denied. So ordered.

Dated: Brooklyn, New York
April 25, 1989

/s/ EUGENE H. NICKERSON
Eugene H. Nickerson,
U.S.D.J.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

85 C 0864

Filed May 18, 1989

MARSHALL P. SAFIR,

Plaintiff,

—against—

UNITED STATES LINES, INC., LYKES BROS. STEAMSHIP CO., INC., MOORE MCCORMACK LINES, INC., AMERICAN PRESIDENT LINES, INC., FARRELL LINES, INC., AMERICAN EXPORT LINES, INC., PRUDENTIAL LINES, INC., PRUDENTIAL-GRACE LINES, INC.,

Defendants.

MEMORANDUM AND ORDER

MARSHALL P. SAFIR
Floral Park, New York
plaintiff *pro se*

WALTER, CONSTON & SCHURTMAN, P.C.
(William Schurtman, Esq. and Gregory F. Hauser, Esq., of counsel)
New York, New York
FOLEY, HOAG & ELIOT
(Verne W. Vance, Jr., Esq., of counsel)
Boston, Massachusetts
for defendants Farrell Lines, Inc. and American Export Lines, Inc.

KOMINERS, FORT, SCHLEFER & BOYER
(T.S.L. Perlman, Esq., and William H. Fort, Esq., of counsel)
Washington, D.C.
for defendants Lykes Bros. Steamship Co., Inc.

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(John W. McConnell, Jr., Esq., of counsel)
Washington, D.C.
for defendants United States Lines, Inc. and United States Lines (S.A.), Inc. (formerly Moore McCormack Lines, Inc.)

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(Richard G. Ashworth, Esq., of counsel)
New York, New York
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Washington, D.C.
HILLS, BETTS & NASH
New York, New York
for defendants American President Lines, Ltd.

DAVID P. HOWE, ESQ.
New York, New York
for defendants Prudential Lines, Inc. and Prudential-Grace Lines, Inc.

NICKERSON, *District Judge*

Plaintiff moves to vacate, alter or amend an order of this court dated April 25, 1989 under Rule 59(e) of the Federal Rules of Civil Procedure.

In an opinion dated April 25, 1989 the court modified an earlier order to provide that plaintiff "is prevented only from commencing additional federal court actions relating in any way to defendants' pricing practices or merchant marine subsidies during the 1965-1966 period without first obtaining leave of the district court."

The court then denied plaintiff leave to file another action against defendants arising out of the same circumstances as the earlier suit.

Plaintiff has still failed to show why his current claims are different from the earlier action or why they have any merit.

Plaintiff's motion is denied. So ordered.

Dated: Brooklyn, New York
May 12, 1989

/s/ EUGENE H. NICKERSON
Eugene H. Nickerson,
U.S.D.J.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

85 C 0864

Filed May 18, 1989

MARSHALL P. SAFIR,

Plaintiff,

—against--

UNITED STATES LINES, INC., LYKES BROS. STEAMSHIP CO., INC., MOORE MCCORMACK LINES, INC., AMERICAN PRESIDENT LINES, INC., FARRELL LINES, INC., AMERICAN EXPORT LINES, INC., PRUDENTIAL LINES, INC., PRUDENTIAL-GRACE LINES, INC.,

Defendants.

MEMORANDUM AND ORDER

MARSHALL P. SAFIR
Floral Park, New York
plaintiff *pro se*

WALTER, CONSTON & SCHURTMAN, P.C.
(William Schurtman, Esq. and Gregory F. Hauser, Esq., of counsel)
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Washington, D.C.
HILLS, BETTS & NASH
New York, New York
for defendants American President Lines, Ltd.

DAVID P. HOWE, ESQ.
New York, New York
for defendants Prudential Lines, Inc. and Prudential-Grace Lines, Inc.

NICKERSON, *District Judge*

Before the court is plaintiff's application seeking leave to file a motion to intervene in a proceeding before the Bankruptcy Court for the Southern District of New York.

Plaintiff's application is denied. So ordered.

Dated: Brooklyn, New York
May 12, 1989

/s/ EUGENE H. NICKERSON
Eugene H. Nickerson,
U.S.D.J.